

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 25, 2007

No. 06-41402
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

MARIO ALBERTO DEL BAL-VILLEGAS

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:05-CR-2666-1

Before JOLLY, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Mario Alberto Del Bal-Villegas appeals his guilty-plea conviction of, and sentence for, violating 8 U.S.C. § 1326 by being found in the United States without permission after deportation. Del Bal-Villegas contends that his sentence is unreasonable because this court's post-Booker¹ rulings have effectively reinstated the mandatory sentencing guideline regime condemned in

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

¹ United States v. Booker, 543 U.S. 220 (2005).

Booker. This argument is foreclosed. See *Rita v. United States*, 127 S. Ct. 2456, 2462 (2007).

In light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Del Bal-Villegas* challenges the constitutionality of § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than elements of the offense that must be found by a jury. This court has held that this issue is "fully foreclosed from further debate." *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), petition for cert. filed (Aug. 28, 2007) (No. 07-6202). The Government's motion for summary affirmance is GRANTED, the Government's motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.